IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

Crl.Rev.Pet.No. 3784 of 2006()

CRA.444/2005 of ADDL.SESSIONS COURT,-I, MAVELIKKARA
CC.430/2001 of JUDL.MAGISTRATE OF FIRST CLASS-I, HARIPAD

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REVN. PETITIONER: APPELLANT/ACCUSED:

SUBAIDA THAHA, W/O.M.A. THAHA,
AGED 41 YEARS, MUZHANGODIYIL HOUSE,
KARTHIKAPPALLY MURI, KARTHIKAPPALLY TALUK,
ALAPPUZHA DISTRICT.

BY ADV. SRI.S.SHANAVAS KHAN
SMT.S.INDU

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE:

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1. THE LORD KRISHNA BANK LTD.,
CHEPPAD BRANCH, REPRESENTED BY ITS BRANCH MANAGER,
CHEPPAD VILLAGE, KARTHIKAPPALLY TALUK.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

Crl. R.P. No. 3784 of 2006

Dated this the 20th day of November, 2006

ORDER

In the manner in which I propose to dispose of the revision, I do not think it is necessary to issue notice to the first respondent/complainant.

2. The petitioner/accused in C.C.No.430/2001 on the file of the court of Judicial Magistrate of First Class I, Haripad, was convicted for the offence under Section 138 of the Negotiable Instruments Act and he was sentenced to undergo simple imprisonment for nine months and to pay compensation of Rs.2,50,000/- and in default of payment of compensation to undergo simple imprisonment for three months. The amount covered by the cheque, which is the subject matter of the complaint, is Rs.11 lakhs. After filing the complaint, a sum of Rupees Nine Lakhs was paid to the complainant. Challenging the conviction and sentence, the accused filed Crl.A.No.444/05 before the Additional Sessions Court, I, Mavelikara. The appellate court noted in the judgment thus: “It is brought out in

evidence that after filing of the complaint, the accused had remitted Rs.9,00,000/- in the bank towards that liability. The lower court, after deducting the amount, awarded Rs.2,50,000/- as compensation, Rs.50,000/- more than the cheque amount invoking the power under Section 357(3) of the Code of Criminal Procedure and also provided three months simple imprisonment as default sentence." The appellate court modified the sentence of imprisonment as imprisonment till the rising of the court and confirmed the direction to pay the compensation. The complainant is the Lord Krishna Bank Ltd.

3. The case of the complainant is that towards the legally enforceable debt, the accused issued Ext. P1 cheque. On presentation of the cheque, it was dishonoured. Though Ext. P5 notice was sent, no reply was sent by the accused. Before the trial court, on behalf of the complainant PW's 1 to 3 were examined and on behalf of the accused, DW1 was examined. It is the case of the complainant that the accused and her husband are jointly conducting an industrial unit. A loan was availed from the complainant bank and the outstanding amount payable to the

bank was Rs.14 lakhs. But it was settled for Rs.11 lakhs and towards that liability the cheque was issued. The contention of the accused is that she is not the only person who is liable to repay the loan and the loan was availed by a firm of which she is a partner. She is a sleeping partner. Her husband is the other partner. It is not disputed that the accused has drawn the cheque and that the cheque contains signature of the accused. The trial court found that the accused has not rebutted the presumption under Section 139 of the Negotiable Instruments Act. It was found that the statutory formalities to be complied with under the proviso to Section 138 of the Act were complied with and the complaint was filed within time. The trial court came to the conclusion that Ext. P1 cheque was issued towards the liability of the complainant. The appellate court also considered the evidence in detail and concurred with the view taken by the trial court. No grounds are made out for interference under Section 397 of the Code of Criminal Procedure. There is no error, illegality or impropriety in the conviction and the sentence.

However, taking note of the facts and circumstances of the case, three months' time is granted to the accused to pay the compensation. The conviction and sentence are hereby confirmed subject to the grant of three months' time to the accused to pay the compensation of Rs.2,50,000/-. The sentence shall be kept in abeyance for a period of three months. However, the petitioner shall appear before the trial court on 20th December, 2006 to serve the sentence to imprisonment till the rising of the court and shall continue to appear as may be directed by the trial court till the compensation is deposited.

K.T.SANKARAN,
JUDGE

csl

M.F.A. No. 329/2002B

J.B.KOSHY&M.N.KRISHNAN,JJ

JUDGMENT
Dated this the 9th November, 2006